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EIT HOLDINGS LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

EIT HOLDINGS, LLC, a Delaware company,  
  
Plaintiff and Counterclaim Defendant,  
  
v.  
  
EHARMONY.COM, INC., a Delaware  
corporation,  
  
Defendant and Counterclaim Plaintiff.

Case No. 3:11-cv-02463-JCS

**JOINT STIPULATION AND [PROPOSED]  
ORDER STAYING CASE PENDING APPEAL**

Ctrm: G  
Judge: Honorable Joseph C. Spero

**JOINT STIPULATION**

On December 10, 2010, EIT filed a patent infringement action against multiple defendants in the Northern District of California (C-10-05623-WHA) before the Honorable William H. Alsup. That action alleged that each defendant infringed claims 40 and 41 of U.S. Patent No. 5,828,837. After the initial case management conference, Judge Alsup held that the defendants, including eHarmony, were improperly joined and dismissed all but the first-named defendant (Yelp! Inc.). EIT thereafter filed this action against eHarmony alleging infringement of the same claims.

At the initial case management conference in this action, the parties informed the Court that Judge Alsup had set a claim construction hearing in the originally-filed Yelp case for early October 2011. The parties accordingly asked the Court to continue the case management conference and to postpone setting a schedule until Judge Alsup had had time to consider EIT and Yelp's respective positions on what the claims mean. The Court agreed and set another case management conference. At that subsequent conference held on January 13, 2012, the parties explained the current proceedings before Judge Alsup, including that Yelp had filed a motion for summary judgment of invalidity. The Court decided again to set a further case management conference.

On January 20th, Judge Alsup issued an order on the summary judgment motion brought by Yelp, holding that claims 40 and 41 are invalid. EIT already has filed a notice of appeal that indicates its intent to appeal *inter alia* the summary judgment order entered in the Yelp case. If affirmed, however, there is no dispute that that summary judgment order would completely resolve the case against eHarmony pending before this Court. The parties therefore respectfully request that the Court stay this case pending the resolution of EIT's appeal of the summary judgment order entered in *EIT Holdings, LLC v. Yelp! Inc.*, case no. 3:10-cv-05623-WHA (N.D. Cal.).

NOW, THEREFORE, IT IS HEREBY AGREED AND STIPULATED THAT:

The undersigned parties agreed to stay this case, *EIT Holdings, LLC v. eHarmony.com Inc.*, case no. 3:11-cv-02463-JCS, until the fifth court day after EIT Holdings, LLC's appeal of the summary judgment order in *EIT Holdings, LLC v. Yelp! Inc.*, case no. 3:10-cv-05623-WHA (N.D. Cal.) has been finally adjudicated, which shall be the date on which the last appeal or certiorari petition with respect to the summary judgment order has been denied, dismissed, withdrawn, or otherwise determined.

1 Dated: January 25, 2012

GOLDSTEIN & LIPSKI, PLLC

2 */s/ Edward W. Goldstein*

3 By: \_\_\_\_\_

EDWARD W. GOLDSTEIN

4 Attorneys for Plaintiff and Counterclaim  
5 Defendant EIT Holdings, LLC

6  
7 Dated: January 25, 2012

DURIE TANGRI LLP

8 */s/ Ryan M. Kent*

9 By: \_\_\_\_\_

RYAN M. KENT

10 Attorneys for Defendant and Counterclaim  
11 Plaintiff eHarmony.com, Inc.

12  
13 **FILER'S ATTESTATION**

14 I, Ryan Kent, am the ECF User whose identification and password are being used to file this  
15 document. Pursuant to General Order 45.X.B, I hereby attest that counsel for Plaintiff and Counterclaim  
16 Defendant EIT Holdings, LLC has concurred in this filing.

17 */s/ Ryan M. Kent*

18 \_\_\_\_\_  
RYAN M. KENT

**[PROPOSED] ORDER**

WHEREAS, Plaintiff and Counterclaim Defendant EIT Holdings, LLC and Defendant and Counterclaim Plaintiff eHarmony.com, Inc. have agreed to stay this case, *EIT Holdings, LLC v. eHarmony.com Inc.*, United States District Court, Northern District of California, case no. 3:11-cv-02463-JCS until the fifth court day after EIT Holdings, LLC's appeal of the summary judgment order in *EIT Holdings, LLC v. Yelp! Inc.*, case no. 3:10-cv-05623-WHA (N.D. Cal.) has been finally adjudicated, which shall be the date on which the last appeal or certiorari petition with respect to the summary judgment order has been denied, dismissed, withdrawn, or otherwise determined.

NOW, THEREFORE, IT IS SO ORDERED.

DATED: January 26, 2012

